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**IN THE  
COURT OF APPEALS OF INDIANA**

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LYNN SAMS,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 24A05-0712-CR-714
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

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APPEAL FROM THE FRANKLIN CIRCUIT COURT  
The Honorable J. Steven Cox, Judge  
Cause No. 24C01-0509-FD-869

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**May 7, 2008**

**MEMORANDUM DECISION – NOT FOR PUBLICATION**

**BAKER, Chief Judge**

Appellant-defendant Lynn Sams appeals her conviction for Possession of a Controlled Substance,<sup>1</sup> a class D felony. Specifically, she argues that the State presented insufficient evidence that she had constructive possession of the contraband. Finding no error, we affirm the judgment of the trial court.

### FACTS

On September 13, 2005, Brookville Police Department Officers Brad Loyd and Terry Mitchum stopped Sams's vehicle after she made two right turns without using a turn signal. The officers checked the license plate number on Sams's vehicle and determined it was invalid. Sams acted nervous, talked very quickly, had trouble following directions, fumbled through her wallet, and struggled to find her driver's license. Officer Mitchum administered the Horizontal Gaze Nystagmus test and determined that there was a "clue of possible intoxication." Tr. p. 27.

Sams gave the officers permission to search her vehicle. In the front seat of the vehicle they found a clear makeup bag and a powder compact containing "an orange rock like substance and powder." *Id.* at 51. Laboratory tests confirmed that the powder weighed 0.29 grams and contained Diazepam, a schedule IV controlled substance.

The State charged Sams with class D felony possession of a controlled substance on September 13, 2005. A jury found her guilty as charged on October 29, 2007. The trial court held a sentencing hearing that same day and sentenced her to three years imprisonment with two years suspended to probation. Sams now appeals.

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<sup>1</sup> Ind. Code § 35-48-4-7(a).

## DISCUSSION AND DECISION

Sams argues that she did not have constructive possession of the Diazepam. Specifically, she denies that she owned the makeup bag and emphasizes that the contraband was not in her plain view.

To convict Sams of class D felony possession of a controlled substance, the State must prove beyond a reasonable doubt that she knowingly or intentionally possessed a controlled substance without a valid prescription or order of a practitioner acting in the course of professional practice. I.C. § 35-48-4-7. When addressing sufficiency of the evidence challenges, we neither reweigh the evidence nor judge the credibility of the witnesses. McHenry v. State, 820 N.E.2d 124, 126 (Ind. 2005). We consider only the probative evidence and reasonable inferences therefrom that support the verdict. Drane v. State, 867 N.E.2d 144, 146 (Ind. 2007). If there is conflicting evidence, we consider that evidence only in the light most favorable to the judgment. Id. The evidence is sufficient if an inference may reasonably be drawn from it to support the judgment. Id. at 147.

Constructive possession may support a conviction for a drug offense. Goliday v. State, 708 N.E.2d 4, 6 (Ind. 1999). In order to prove constructive possession, the State must demonstrate that the defendant had both (1) the intent to maintain dominion and control and (2) the capability to maintain dominion and control over the contraband. Id. To prove the intent element, the State must show the defendant's knowledge of the presence of the contraband. Donnegan v. State, 809 N.E.2d 966, 976 (Ind. Ct. App. 2004). This knowledge may be inferred from the exclusive dominion and control over

the premises containing the contraband. Id. Additional circumstances include incriminating statements by the defendant, attempted flight or furtive gestures, a drug manufacturing setting, proximity of the defendant to the drugs, drugs in plain view, and the location of the drugs in close proximity to items owned by the defendant. The capability requirement is met when the State demonstrates that the defendant was able to reduce the controlled substance to his personal possession. Goliday, 708 N.E.2d at 6. Proof of a possessory interest in the premises in which the controlled substance is found is adequate to show the capability to maintain dominion and control over the contraband. Id.

Sams was the sole occupant of the vehicle, which she owned. Tr. p. 24. The makeup bag containing the contraband was within her reach and was found within one foot of her groceries and her bag of clothing. Id. at 34. Furthermore, Sams's nervous behavior, quick speech, and shakiness were incriminating. Id. at 13. In sum, Sams's knowledge and capability to maintain dominion and control over the contraband can be inferred from her exclusive dominion and control over the vehicle and its contents, her ownership of the vehicle, her nervous behavior, and the proximity of the contraband to her personal items. This evidence is sufficient to support the jury's conclusion that Sams constructively possessed the contraband.

Sams argues that the contraband was not in her plain view and, instead, was located inside a closed compact case. While our Supreme Court has acknowledged that contraband in plain view supports the knowledge element of a drug crime, it emphasized that proximity to contraband in plain view is just one of multiple factors that can support

constructive possession. Lampkins v. State, 685 N.E.2d 698, 700 (Ind. 1997). Thus, although the Diazepam was not in Sams's plain view, multiple other factors support her constructive possession of the drug. While Sams argues that the makeup bag and contraband were not hers, we find these arguments to be an invitation for us to reweigh the evidence and judge the credibility of the witnesses—an invitation we must decline when reviewing the sufficiency of the evidence. Thus, we find this evidence to be sufficient to support Sams's conviction.

The judgment of the trial court is affirmed.

RILEY, J., and ROBB, J., concur.